

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID L. JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

October 17, 2006

No. 265801

Wayne Circuit Court

LC No. 05-004794-01

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Following a bench trial defendant was convicted of possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. Defendant was sentenced to five months to 20 years' imprisonment for the possession with intent to deliver less than 50 grams of heroin conviction, five months to five years' imprisonment for the felon in possession of a firearm conviction, and to five years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that there was insufficient evidence to support his convictions of possession with intent to deliver, felon in possession and felony-firearm. We disagree.

In reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). Where a claim of insufficient evidence follows a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

Defendant argues that the prosecution's evidence was legally insufficient to support his convictions. Officer Ruffin, shotgun man and the officer in charge, saw defendant put an "unknown item" into the vent, but he never actually saw defendant possess or hide heroin or a handgun. There is no fingerprint evidence connecting defendant to either item, and his proximity to the vent is insufficient to prove that he had dominion and control over the items. Also, codefendant admitted to keeping the gun in the house for her protection and to selling narcotics.

Defendant does not argue that the evidence was insufficient to prove that he had intent to deliver the heroin. The required elements of possession with intent to deliver less than 50 grams of a controlled substance (heroin in this case) are: (1) the recovered substance is heroin; (2) the heroin is in a mixture weighing less than 50 grams, (3) the defendant was not authorized to possess the heroin, and (4) the defendant knowingly possessed the heroin with the intent to deliver. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992); MCL 333.7401(2)(a)(iv). The required elements of felon in possession of a firearm are: (1) the defendant possessed a firearm; (2) the defendant had been convicted of a prior felony; and (3) less than five years had elapsed since the defendant had been discharged from probation. *People v Tice*, 220 Mich App 47, 50-54; 558 NW2d 245 (1996); MCL 750.224f. The required elements of felony-firearm are that the defendant possesses a firearm during the commission or attempted commission of a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000).

Defendant's appeal focuses on whether he had constructive possession of the heroin and handgun recovered from the vent. Our Supreme Court has upheld similar convictions when a jury has found a defendant to have constructive possession of narcotics and/or a firearm. *Burgenmeyer, supra*, p 431; *Wolfe, supra*, p 508. A defendant has constructive possession if there is either knowledge of or proximity to the narcotics and/or gun coupled with indicia of control. *Burgenmeyer, supra*, p 438. Circumstantial evidence can demonstrate constructive possession where it proves defendant's proximity to and control over the contraband to support an inference by a rational trier of fact that defendant was in constructive possession of the contraband. *Burgenmeyer, supra*, p 438; *Wolfe supra*, p 526.

There is sufficient circumstantial evidence that defendant possessed the heroin and gun. The moment Officer Ruffin entered the dwelling and defendant glanced at him, defendant bolted from the living room through the dining room and into the northeast bedroom. Under these circumstances, a reasonable trier of fact could find that defendant dashed to the back to hide the contraband and avoid being arrested. Officer Ruffin even pursued defendant and observed him putting an "unknown item" in the same vent that Officer Sweeney retrieved heroin wraps and a gun from only minutes later.

No other occupant of the house had gone into the room since defendant had placed the "unknown item" in the vent. Given that the only other thing in the vent besides the heroin and gun was an old rag, and the items were resting on top of the rag when Officer Sweeney found them, a rational trier of fact could find that defendant stashed the items in the vent. This would indicate that defendant had access to, knowledge of, and control over the heroin and gun. Codefendant's possession of the gun would not preclude defendant's possession because individuals can have joint possession of such items. *Wolfe, supra*, p 520.

It is for a trier of fact to weigh the evidence introduced at trial. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Here, it would be reasonable for a rational trier of fact to conclude that defendant was in constructive possession of the heroin and gun because he had knowledge of, proximity to and control over the items. Thus, there is also sufficient evidence to prove felony-firearm, as defendant committed the felony of possessing heroin at the same time that he was in possession of the firearm.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens